



Yellowstone County Board of Adjustment Minutes/January 8, 2009

The County Board of Adjustment met on Thursday, January 8, 2009 in the Large Conference Room, 4th Floor of the Parmly-Billings Library. **Chairman Heinrich** called the meeting to order at 4:00 p.m. **Chairman Heinrich** introduced the board members and staff in attendance.

Name	Title	01/08/09	02/12/09	03/12/09	04/09/09	05/14/09	06/11/09	07/09/09	08/13/09	09/10/09	10/08/09	11/12/09	12/10/09
Oscar Heinrich	Chairman	1											
Brenda Robison	Boardmember	1											
Mike Boyett	Boardmember	1											
Carlotta Hecker	Boardmember	1											
Dolores Terpstra	Boardmember	1											

Chairman Heinrich introduced the County Zoning Commission members and staff in attendance:
Nicole Cromwell, Planner II/Zoning Coordinator
Elizabeth Allen, Planning Clerk

Public Comments

There were none.

Approval of Minutes

Without objection the minutes of November 13, 2008 were approved.

PUBLIC HEARINGS:

Commissioner Heinrich read the determinations for granting a variance and reviewed the rules for the procedure by which the public hearings will be conducted.

Commissioner Hecker recused herself because she is within 300' of the property.

Item #1: County Variance #258 – 1155 Wren Street – A variance from Section 27-308 requiring a 20 foot minimum rear setback for a proposed attached garage to allow a 0 foot rear setback; Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 33% for a proposed attached garage in a Residential Manufactured Home (RMH) zone, Lot 1, Block 3, Opportunity Subdivision. Tax ID: C13910, Beau and Susan Kuntz, owners.

Ms. Cromwell read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining

the existing zoning of the subject property and the requested variance from code. She said staff is forwarding a recommendation of conditional approval.

Discussion:

Commissioner Heinrich asked how a lot this size was allowed. When was the subdivision approved? **Commissioner Hecker** stated that this was developed in the 1950s. **Commissioner Heinrich** asked for clarification as to the placement of the drain field and septic tanks. **Ms. Cromwell** clarified. **Commissioner Heinrich** asked if there will be any easements needed in the future if this variance is approved. **Ms. Cromwell** does not believe that they will need any easements; the utilities are already in the alleyway. **Commissioner Heinrich** what would happen if the alley is never developed. **Ms. Cromwell** stated that the alley would remain dedicated to the public unless the county was to abandon or vacate the alley. **Ms. Cromwell** explained that if the alley was abandoned then the property is generally split between the property owners. The utilities would then need an easement for the utilities that are currently in the alley. **Commissioner Heinrich** asked when they will be putting in sewer lines for this property. **Commissioner Robison** is on the Lockwood Sewer Committee and stated that this property is in the second phase for Lockwood Sewer. It will be at least a year before the sewer will be placed in this subdivision.

Applicant:

Bo Kuntz, 1155 Wren St, they are asking for a zero foot setback but the garage will be in about 6 inches so they will have room to put the gutter and eaves. They are planning to run the gutter across the driveway and discharge it into their yard. If they do come down the alley to hookup sewer he doesn't believe that there should be any trouble with adding the sewer.

Susan Kuntz, 1155 Wren St, they have two small children and don't have room for storage. They have also had a rash of thefts in the area and they would to have a place to store their children's bikes.

Proponents:

Cody Buchanan, 1150 Wren, this has been a learning experience for him because he would also like to put a garage on his property. The lots are very small in this area and it makes putting a garage very difficult. The applicants have done a very good job of fixing up their property and it looks very nice. He would like to put a deck on his property but it would count as lot coverage. He would like to know how one would determine if an alley is abandoned. He would like to know if there is a time line for how long an alley can be undeveloped before it will be abandoned. He thinks that this will addition will look very nice and it will not hinder any of the streets

Bob Moats, Director, County Public Works, he would like to apologize to the applicants because his department was in error in telling them that they did not need a building permit. He is working with his staff and has had **Ms. Cromwell** come to help educate them so that something like this will never happen again. He is speaking in favor because his Department was in error and the applicants built in good faith and have already put money into this project.

Opponents:

Carlotta Hecker, she is concerned about the sewer and the fact that this might impede the sewer being put into the alley. They may have to dig up to 25 feet deep in order to put the sewer in. She doesn't mind a garage, she is just concerned about the sewer and that it might cause the sewer to become more expensive.

Rebuttal:

Susan Kuntz, there is a lot of work that will need to be done before they can put in the sewer and there are all sorts of utility boxes in the area. Other alleys in the area are even narrower than their

property. There is no other place that they can locate their garage because of the clear vision zones and the layout of their property.

Motion:

On a motion by Commissioner Boyett, seconded by Commissioner Terpstra and approved with a 3-1-1 voice vote with Commissioner Heinrich voting against Variance #258 was approved with the following conditions:

1. The variances from Section 27-308 are as follows: 1) allow a 0 foot rear setback (alley property line) and 2) 33% lot coverage for an attached garage and no other variances from the regulations are intended or implied by this approval.
2. The variance applies to Lot 1, Block 3 of Opportunity Subdivision and the attached garage shall be completed as shown on the site plan submitted.
3. All roof drainage from the east side of the building shall be captured and redirected on to the applicant's property.
4. No part of the attached garage shall overhang the adjacent alley or public right of way.
5. The applicant shall submit a Zoning Compliance Permit application and receive approval from the Planning Division within 3 months of Board of Adjustment approval.
6. The applicant shall complete the attached garage structure within 1 year of Board of Adjustment approval.
7. Failure to begin or complete actions within the time limit set within the conditions of approval shall void the variance.
8. These conditions of this variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
9. Failure to comply with these conditions of approval shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.

Discussion:

Commissioner Terpstra asked if there can be a waiver attached as a condition that would release the installers of the sewer from any liability for damage to the garage. **Ms. Cromwell** stated that they have never added a condition of that type. **Bob Moats** stated that he feels that type of condition would be onerous for these property owners. He has seen sewers being dug and he thinks that the sewer companies have the ability to put in sewers in very tight spaces. He feels that the property owner has shown all good faith but was given bad information. **Commissioner Heinrich** asked **Ms. Cromwell** if there is anything that can be done to keep other properties in this subdivision from needing variances. **Ms. Cromwell** stated that there have been subdivision wide variances granted for height and lot coverage. To implement a subdivision wide variance agreement would be needed from all the property owners in the subdivision. **Commissioner Heinrich** stated that he doesn't want to set precedent area wide because of this subdivision. This type of subdivision has many lots that are difficult to build. **Commissioner Heinrich** feels that the cost of a variance might be prohibitive to some property owners trying to build a garage. **Commissioner Boyett** feels that the Board is here to address only this variance. **Commissioner Heinrich** still has a problem with this because of the precedent that will be set by granting the variance.

Other Business:

Election of Officers:

On a motion to elect Commissioner Heinrich Chair by Commissioner Terpstra, seconded by Commissioner Boyett and approved with a 4-0 voice vote, Commissioner Heinrich was elected Chairman.

On a motion to elect Commissioner Hecker Vice-Chair by Commissioner Terpstra, seconded by Commissioner Boyett and approved with a 4-0 voice vote Commissioner Hecker was elected Vice-Chair.

The board discussed whether a subdivision wide variance should be granted for this area because of the smaller lots. **Ms. Cromwell** stated that the individual property owners would need to get together put in a variance for the entire area. **Commissioner Heinrich** wonders if there should be a moratorium on Variances for this area until the sewers go in. The board decided that they should leave the subdivision as is. **Ms. Cromwell** stated that variances can be conditioned that they cannot proceed until after the sewer is put in.

Adjournment:

Meeting was adjourned at 4:57 p.m.

Oscar Heinrich, Chairman

ATTEST:

Elizabeth Allen, Planning Clerk